IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.3938 OF 1991.

Shri Vyankates Narsayya
Pandarali : Petitioner.

versus

Smt.Dhirajibai Khilowan
Parane : Respondent.

Mr.Pankaj Das h/f Mr.Rajesh Datar for the petitioner.
None for the respondent.

CORAM : D.G.DESHPANDE, J.

DATED : October 07, 2006.

ORAL ORDER

1. Heard advocate for the petitioner. Nobody is present for the respondent. Petitioner is the landlord. He filed a suit for eviction of the tenant on two counts viz. bonafide occupation and habitual default. That suit was dismissed on both the counts. The landlord preferred an appeal. That was also dismissed by

the appellate Court. Hence this petition.

2. The advocate for the petitioner raised only one contention and that is regarding the case of the landlord for bonafide occupation. Both the courts below have given perverse findings. My attention was drawn to the judgments of the trial court and the appellate Court in that regard. In para 8, the appellate Court has considered this aspect. According to the plaintiff, there are three rooms, one of which is leased out to the defendant, another is used for business of hair cutting saloon by the plaintiff and his brother in law, and only one room is available for actual residence of the plaintiff and his family members. The plaintiff admitted in his cross examination that besides these three rooms, the plaintiff has constructed two sheds in front of his building and, therefore, according to the appellate Court, these two sheds are available to the plaintiff for residence. The appellate Court also considered the fact that the wife and children of the plaintiff were living at his native place in Andhra Pradesh. Ultimately, the appellate Court came to the conclusion that besides one room,

actually using by the plaintiff, two sheds were sufficient to accommodate the plaintiff.

3. The trial Court laid emphasis on these two sheds in possession of the plaintiff.

4. I do not find that the approach of both the courts below was right. Two sheds cannot be equated with properly constructed room. In any case, the sheds are temporary. Further the fact that the wife and children of the plaintiff are residing at native place in Andhra Pradesh, cannot be a ground for rejecting the claim of the plaintiff. The plaintiff is landlord and no court could say that his wife and children should permanently stay in Andhra Pradesh. Plaintiff is the best judge of his requirements and needs and he cannot be compelled to live separately from his wife and children. Admittedly, the plaintiff has only one room in his occupation and possession. Second room is used for business and third is in occupation and possession of the tenant. Therefore, both the judgments of the trial Court as well as appellate Court are perverse. In this view of the matter, this petition is required to be allowed in writ

jurisdiction under Article 227 of the Constitution of India and the judgments of both the courts below are liable to be set aside.

5. For all these reasons, I pass the following order :-

:ORDER:

The petition is allowed.

Both the judgments of the lower court and the appellate Court are set aside and quashed.

Suit of the plaintiff for eviction on the ground of bonafide occupation is decreed.

Respondent to bear the costs of the plaintiff through out.

Rule is made absolute in the above terms.

[D.G.DESHPANDE, J.]